

**Remarks/Arguments:**

In the final Office Action dated August 14, 2006, the Examiner rejected claims 1, 16-17 and 19 under 35 USC 112, second paragraph; has made final the rejections of claims 1-4, 6-15, 18 and 20-27 as being anticipated by Waldman; and has concluded that claims 16-19 would be allowable if the rejection under 35 USC 112 were overcome.

Claims 1, 16-17 and 19 are amended to overcome the rejection under 35 USC 112, using language agreed by the Examiner in a teleconference with the undersigned on September 20, 2006. Entry of this amendment is respectfully requested, because no new search is required and overcoming the rejections under 35 USC 112 reduces the number of potential issues for appeal. Claims 16-19 are seen to be in condition for allowance. Claims 4 and 14 are amended to comport with the change to claim 1, and claim 23 is amended to add a missing preposition.

**Interview Summary:**

The undersigned initiated a telephone interview with the Examiner on October 4, 2006. Agreement was reached that the rejection relies on the "identification information" of Waldman (e.g., artist name, song title) as anticipating the claimed "extracted feature". Agreement was not reached for the following points. The undersigned noted that the identification information was not seen as analogous to an extracted feature, but assuming it arguendo, contended that the portable communications device of Waldman receives that "identification information" from an audio recognition service [para 0008, 0010], and therefore does not "extract" it from the Waldman sampled portion of the full audio work. The Examiner noted that point but could not conclude the same over the phone, and requested the undersigned submit a detailed argument in writing so that he may more thoroughly review Waldman. The Examiner further noted that Waldman might be interpreted such that the portable electronic device extracts the "identification information" from the message received from the audio recognition service, though he stipulated that he had not yet considered that possibility in depth and suggested that the undersigned address that interpretation in any written response submitted.

Argument:

PART 1: The independent claims rejected under 35 USC 102 include claims 1, 20, 23 and 26. Claims 1 and 23 are directed to a mobile station comprising a processor (processing means in claim 23); claim 20 is directed to a user interface of a portable electronic device that comprises a user input mechanism enabled to cause a processor internal to the device to extract a plurality of features; claim 26 is directed to an embodied program within a mobile station. The feature extraction recited in those claims therefore occurs within the mobile station/portable device.

Claim 1 is seen as exemplary of the distinctions over Waldman, and recites in relevant part:

a user input mechanism ~~operable to cause~~ for causing the processor to extract at least one feature from a digital media sample, said feature being descriptive of an identity of a content of said media sample.

Waldman discloses a portable electronic device that transmits a sampled portion of a full audio work to an audio recognition service for identification of the audio work. The Waldman audio recognition service identifies the full audio work from the received sampled portion, and sends to the portable device identification information of the full audio work and purchasing information by which the full audio work may be purchased. See Waldman, abstract; Fig 2 blocks 106, 108 and 110; Fig. 3 block 312; paras, [0008], [0011]-[0012], [0018], [0040], [0049]-[0051], [0053] and [0062]. Waldman discloses at para. [0010] that the identification information may include the title and artist of the work, as well as album, artist information, listing of CDs containing the work, and date of release. Therefore the Waldman portable device receives the identification information from the audio recognition service, it does not “extract” it from the sampled portion that Waldman seeks to identify.

Responsive to the potential interpretation noted at the end of the interview summary above, one might interpret Waldman (not admitted) as “extracting” the identification information from the message received from the audio recognition service. But claim 1 recites “to extract at least one feature from a digital media sample”. The Waldman message received at the portable device from the audio recognition service bears the

identification information but not the sampled portion. Any identification information gleaned from that message therefore cannot be from the Waldman sampled portion.

PART 2: More fundamentally, the Waldman “identification information” is not seen to anticipate the claimed feature extracted from a media sample. Claim terms are read in the context of the written description, which in this instance explicitly defines the term “feature” at para [00020]:

“A feature of that sample, or a digital version of it (*Ed: digital version of the sample, see last sentence of page 6*), is a digital marker, descriptor, or other identifier of the content of the sample that may be gleaned or extracted from a digital analysis of it. ... Features are extracted from samples in order to quantify various characteristics of the sample.”

Exemplary features are described at paras. [00034] through [00049] and include spectral flatness, spectral centroid, rhythm, melody, and MPEG-7 descriptors. These are different in kind than Waldman’s identification information of song name and artist, which are commonly understood as metadata associated with an audio work but not a part of that audio work.

One palpable distinction between the two is that metadata such as Waldman’s song name and artist can be changed without changing the underlying full audio work. A feature as described in the present specification changes only when the underlying work is changed.

Waldman does not disclose feature extraction. Even in Walden’s audio recognition service there is no disclosure of feature extraction from the sampled portion received from the Walden portable device.

Regardless of any of the above, the rejection of claims 4-13, 20-22, and 25-27 are not seen as sustainable in view of the change in subject matter cited in the final rejection as compared to that cited previously in the non-final rejection. The non-final rejection asserted that the Waldman sampled portion anticipated the claimed extracted feature(s), whereas the final rejection asserts that Waldman’s identification information anticipates that claim element.

If the Waldman song title and artist are considered to anticipate the claimed extracted feature(s), then Waldman does not anticipate those dependent claims because:

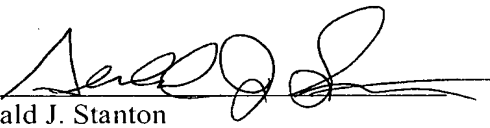
- there is no “transmitting the at least one feature” from the mobile device as in claim 4 because the Waldman identification information already identifies the full audio work, and further the single user input of claim 4 is clearly not within Waldman;
- there is no user input mechanism whereby a single user entry causes the processor to extract features and causes the extracted features to be transmitted as in claim 20;
- there is no transmitting a message with the extracted feature as in claim 25;
- the extracted features are not transmitted as in claim 26;
- if the message received by Waldman’s portable device that bears the identification information is considered as anticipating the “extracted features to be transmitted outside the device” as in claim 20, then there is no “reply message” bearing a text identifier of the media file as in claim 20;
- there is no “same user input” as in claim 27.

PART 3: Note that claim 20 recites both “extracted features” and a “text identifier of a media file having features that exactly match the plurality of extracted features”. A rejection that relies on Waldman’s identification information as anticipating the claimed “extracted features” must fail as to claim 20 by the doctrine of claim term differentiation. Different elements of a claim recite different things, and cannot be conflated else an element would be “read out” of the claim. Just as a patentee cannot interpret two distinct claim terms to mean the same thing after a patent has issued, so is the patent office precluded during prosecution from interpreting the “extracted features” and “text identifier” to refer to the same thing (e.g., the Waldman identification information). Because Waldman’s identification information is clearly more closely aligned with the “text identifier” of claim 20, it cannot read on the “extracted features” of that same claim.

That same claim term “extracted feature” cannot be re-interpreted in other claims of the same application in a manner inconsistent with its interpretation for claim 20. Therefore, Waldman’s identifying information such as song title and artist cannot anticipate a feature extracted from a media sample as recited in every independent claim.

For at least the above reasons, all claims are seen to patentably distinguish over Waldman and are seen to be in condition for allowance. The Applicants respectfully request that the Examiner review the cited art in view of the above remarks and amendments, withdraw all rejections, and pass each of claims 1-14 and 16-27 to issue. The undersigned representative welcomes the opportunity to discuss any matters, formal or otherwise, with the Examiner via teleconference at the Examiner's discretion.

Respectfully submitted:

  
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